

HOUSE BILL No. 1893

DIGEST OF INTRODUCED BILL

Citations Affected: IC 29-3-2-1; IC 31-30; IC 31-34-21-7.7; IC 31-37-6-6; IC 33-5-9-5; IC 33-5-25-5.

Synopsis: Guardianship proceedings in juvenile court. Gives juvenile courts exclusive original jurisdiction over guardianships for certain children who have been found by a juvenile court to be children in need of services (CHINS). Allows a court to issue an order to detain a child who has been taken into custody for a delinquent act if the court finds probable cause to believe that it is not in the best interests and welfare of the child to be returned to the child's home.

Effective: July 1, 2001.

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January 17, 2001, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 1893

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 29-3-2-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) This article applies to the
3 following:

4 (1) The business affairs, physical person, and property of every
5 incapacitated person and minor residing in Indiana.

6 (2) Property located in Indiana of every incapacitated person and
7 minor residing outside Indiana.

8 (3) Property of every incapacitated person or minor, regardless of
9 where the property is located, coming into the control of a
10 fiduciary who is subject to the laws of Indiana.

11 (b) Except as provided in subsections ~~(c)~~ (c) through (e), the court
12 has exclusive original jurisdiction over all matters concerning the
13 following:

14 (1) Guardians.

15 (2) Protective proceedings under IC 29-3-4.

16 (c) A juvenile court has exclusive original jurisdiction over matters
17 relating to **the following**:



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(1) Minors described in IC 31-30-1-1.

(2) Matters related to guardians and guardianships described in IC 31-30-1-1(10).

(d) Except as provided in subsection (c), courts with child custody jurisdiction under:

(1) IC 31-14-10;

(2) IC 31-17-2-1; or

(3) IC 31-17-3-3;

have original and continuing jurisdiction over custody matters relating to minors.

(e) A mental health division of a superior court under IC 33-5.1-2 has jurisdiction concurrent with the court in mental health proceedings under IC 12-26 relating to guardianship and protective orders.

(f) Jurisdiction under this section is not dependent on issuance or service of summons.

SECTION 2. IC 31-30-1-1, AS AMENDED BY P.L.164-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. A juvenile court has exclusive original jurisdiction, except as provided in sections 9, 10, 12, and 13 of this chapter, in the following:

(1) Proceedings in which a child, including a child of divorced parents, is alleged to be a delinquent child under IC 31-37.

(2) Proceedings in which a child, including a child of divorced parents, is alleged to be a child in need of services under IC 31-34.

(3) Proceedings concerning the paternity of a child under IC 31-14.

(4) Proceedings under the interstate compact on juveniles under IC 31-37-23.

(5) Proceedings governing the participation of a parent, guardian, or custodian in a program of care, treatment, or rehabilitation for a child under IC 31-34-16 or IC 31-37-15.

(6) Proceedings under IC 31-34-4, IC 31-34-5, IC 31-37-5, and IC 31-37-6 governing the detention of a child before a petition has been filed.

(7) Proceedings to issue a protective order under IC 31-32-13.

(8) Proceedings in which a child less than sixteen (16) years of age is alleged to have committed an act that would be a misdemeanor traffic offense if committed by an adult.

(9) Proceedings in which a child is alleged to have committed an act that would be an offense under IC 9-30-5 if committed by an adult.

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(10) Guardianship proceedings for a child:

(A) who has been adjudicated as a child in need of services;

(B) for whom a juvenile court has approved a permanency plan under IC 31-34-21-7 that provides for the appointment of a guardian; and

(C) who is the subject of a pending child in need of services proceeding under IC 31-34.

(11) Other proceedings specified by law.

SECTION 3. IC 31-30-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) Except as provided in subsections (b) and (c), the juvenile court's jurisdiction over a delinquent child or a child in need of services and over the child's parent, guardian, or custodian continues until:

(1) the child becomes twenty-one (21) years of age, unless the court discharges the child and the child's parent, guardian, or custodian at an earlier time; or

(2) guardianship of the child is awarded to the department of correction.

(b) The juvenile court may, on its own motion, after guardianship of a child is awarded to the department of correction, reinstate the court's jurisdiction for the purpose of ordering the child's parent, guardian, or custodian to participate in programs operated by or through the department of correction.

(c) The juvenile court's jurisdiction over a parent or guardian of the estate of a child under this section continues until the parent or guardian of the estate has satisfied the financial obligation of the parent or guardian of the estate that is imposed under IC 31-40 (or IC 31-6-4-18 before its repeal).

(d) The jurisdiction of the juvenile court over a guardianship proceeding described in IC 31-30-1-1(10) continues until the earlier of the date that:

(1) the juvenile court terminates the guardianship; or

(2) the child becomes:

(A) nineteen (19) years of age, if a child who is at least eighteen (18) years of age is a full-time student in a secondary school or the equivalent level of vocational or technical training; or

(B) eighteen (18) years of age, if clause (A) does not apply.

If the guardianship continues after the child becomes the age specified in subdivision (2), the juvenile court shall transfer the guardianship proceedings to a court having probate jurisdiction in the county in which the guardian resides. If the juvenile court has



both juvenile and probate jurisdiction, the juvenile court may transfer the guardianship proceedings to the probate docket of the court.

(e) The jurisdiction of the juvenile court to enter, modify, or enforce a support order under IC 31-40-1-5 continues during the time that the court retains jurisdiction over a guardianship proceeding described in IC 31-30-1-1(10).

(f) At any time, a juvenile court may, with the consent of a probate court, transfer to the probate court guardianship proceedings and any related support order initiated in the juvenile court.

SECTION 4. IC 31-34-21-7.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 7.7. If the juvenile court approves a permanency plan under section 7 of this chapter that provides for the appointment of a guardian for a child, the juvenile court may appoint a guardian and administer a guardianship for the child under IC 29-3. If a guardianship proceeding for the child is pending in a probate court, the probate court shall transfer the proceeding to the juvenile court.**

SECTION 5. IC 31-37-6-6, AS AMENDED BY P.L.188-1999, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 6. (a) The juvenile court shall release the child on the child's own recognizance or to the child's parent, guardian, or custodian upon the person's written promise to bring the child before the court at a time specified. However, the court may order the child detained if the court finds probable cause to believe the child is a delinquent child and that:**

- (1) the child is unlikely to appear for subsequent proceedings;
- (2) detention is essential to protect the child or the community;
- (3) the parent, guardian, or custodian:
 - (A) cannot be located; or
 - (B) is unable or unwilling to take custody of the child;
- (4) **return of the child to the child's home is or would be:**
 - (A) **contrary to the best interests and welfare of the child;**
 - and**
 - (B) **harmful to the safety or health of the child;** or
- (5) the child has a reasonable basis for requesting that the child not be released.

However, the findings under this subsection are not required if the child is ordered to be detained in the home of the child's parent, guardian, or custodian or is released subject to any condition listed in

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subsection ~~(c)~~: **(d)**.

(b) If a child is detained for a reason specified in subsection (a)(3), ~~or (a)(4), or (a)(5)~~, the child shall be detained under IC 31-37-7-1.

(c) If a child is detained for a reason specified in subsection (a)(4), the court shall make written findings and conclusions that include the following:

(1) The factual basis for the finding specified in subsection (a)(4).

(2) A description of the family services available and efforts made to provide family services before removal of the child.

(3) The reasons why effort made to provide family services did not prevent removal of the child.

(4) Whether efforts made to prevent removal of the child were reasonable.

(d) Whenever the court releases a child under this section, the court may impose conditions upon the child, including:

(1) home detention;

(2) electronic monitoring;

(3) a curfew restriction;

(4) a protective order;

(5) a no contact order;

(6) an order to comply with Indiana law; or

(7) an order placing any other reasonable conditions on the child's actions or behavior.

SECTION 6. IC 33-5-9-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. **(a) Subject to this section**, the superior courts have the same jurisdiction as the Boone circuit court. ~~except that:~~

~~(1) (b)~~ Only the circuit court has juvenile jurisdiction. ~~and~~

~~(2) (c)~~ **Except as provided in IC 31-30-1-1**, only the superior court No. 1 has probate jurisdiction.

SECTION 7. IC 33-5-25-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) ~~The~~ **Except as provided in IC 31-30-1-1**, Hendricks superior court No. 1 has original, exclusive jurisdiction in all matters pertaining to the probate of wills, the appointment of guardians, executors, administrators, personal representatives, and trustees, and to the administration and settlement of estates of protected persons (as defined in IC 29-3-1-13) and deceased persons, and of trusts, adoptions, and surviving partnerships, and in all probate and other matters provided for by IC 29, except its jurisdiction is not exclusive to civil actions by or against personal representatives, but is concurrent with the Hendricks circuit court,



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Hendricks superior court No. 2, and Hendricks superior court No. 3.

(b) Except as provided in subsection (a), each superior court in the county has original and concurrent jurisdiction with the circuit court in all civil actions and proceedings at law and in equity, and actions for dissolution or annulment of marriage, and in all criminal cases and proceedings, but ~~neither none of the superior court has courts have~~ the jurisdiction of a juvenile court.

(c) Each superior court in the county has original and concurrent jurisdiction with the circuit court in all appeals or reviews from boards of county commissioners or other executive or administrative agencies and all other appellate jurisdiction vested in the circuit court.

SECTION 8. [EFFECTIVE JULY 1, 2001] (a) IC 29-3-2-1, IC 31-30-1-1, IC 31-30-2-1, IC 33-5-9-5, and IC 33-5-25-5, all as amended by this act, and IC 31-34-21-7.7, as added by this act, apply to all proceedings pending under IC 31-34 on July 1, 2001, and to all proceedings commenced under IC 31-34 after June 30, 2001.

(b) On July 1, 2001, all guardianship matters:

(1) that are pending in a court other than a juvenile court; and

(2) over which a juvenile court has exclusive original jurisdiction under IC 31-30-1-1, as amended by this act; shall be transferred to the juvenile court. A matter transferred under this SECTION shall be treated as if it were originally filed in the juvenile court.

(c) IC 31-37-6-6, as amended by this act, applies to all proceedings pending under IC 31-37 on July 1, 2001, and to all proceedings commenced under IC 31-37 after June 30, 2001.

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